

United States District Court
Eastern District of Michigan
Southern Division

United States of America,

Plaintiff,

Criminal No. 19-cr-20026

v.

Hon. Gershwin A. Drain

D-1 Bharath Kakireddy,

Defendant.

**Unopposed Combined Application for Entry of Preliminary Order of
Forfeiture and Brief in Support Thereof**

The United States applies to this Court for entry of a Preliminary Order of Forfeiture. In support of this Application, the government states the following:

Background

The United States filed an Indictment on January 15, 2019, which charges defendant with Conspiracy to Commit Visa Fraud and Harbor Aliens for Profit, in violation of 18 U.S.C. § 371. The Indictment contains forfeiture allegations providing, inter alia, notice that upon conviction of the alleged offenses, the defendant shall forfeit to the United States, under 18 U.S.C. § 982(a)(6) and/or under 18 U.S.C. § 981(a)(1)(C) together with 28 U.S.C. § 2461(c) his right, title, and interest in any property, real or personal, which constitutes, or is derived from, or is traceable to proceeds of the commission of the offense, and all property, real

or personal, which was used to facilitate or intended to be used to facilitate, the commission of the offense.

The United States filed a Forfeiture Bill of Particulars on May 1, 2019 (Dkt. No. 70), pursuant to Federal Rule of Criminal Procedure 7(f), to provide notice to the defendant of the following specific property the Government intends to forfeit upon conviction:

- Forty-five dollars and ten cents (\$45.10) U.S. Currency seized from Bank of America Account Number XXXXXXXXX0175 in the name of Bharath Kakireddy;

Notice was also provided that the United States intends to seek the imposition of personal forfeiture money judgment against defendant Bharath Kakireddy, in favor of the United States, in the amount of \$32,454.90. The forfeiture money judgment represents the proceeds obtained by defendant as a result of his offense, minus the \$45.10 in U.S. currency already seized from defendant's bank account.

Basis for Forfeiture

On May 2, 2019, defendant entered a guilty plea to the Indictment charging him with Count One, Conspiracy to Commit Visa Fraud and Harbor Aliens for Profit, in violation of 18 U.S.C. § 371. Pursuant to Federal Rule of Criminal Procedure 32.2(b)(1)(B), in determining what property should be forfeited, the Court may rely on "evidence already in the record, including any written plea

agreement, and on any additional evidence or information submitted by the parties and accepted by the court as relevant and reliable.”

At the plea hearing defendant admitted he received “approximately \$30,000” in exchange as a result of his violation of Count One of the Indictment. (Dkt. 78 at 18-19, plea transcript). The parties agree with the presentence report conclusion that the specific amount obtained by defendant as a result of his offense, was \$32,500. (Presentence Investigation Report at paragraph 21). The government further submits, and defendant does not oppose, that the Forty-five dollars and ten cents (\$45.10) in U.S. Currency seized from Bank of America Account Number XXXXXXXXX0175 in the name of Bharath Kakireddy is forfeitable to the United States as proceeds of defendant’s violation of Count One of the Indictment.

Rule 32.2: Entry of Preliminary Order of Forfeiture

Pursuant to Fed. R. Crim. P. 32.2, and consistent with defendant’s guilty plea, the Government seeks entry of a Preliminary Order of Forfeiture for a forfeiture money judgment against defendant Kakireddy in favor of the United States in the amount of \$32,454.90, which is an amount that constitutes, or was derived from, gross proceeds obtained, directly or indirectly, from Defendant Kakireddy’s violation of Count One of the Indictment, minus the \$45.10 in funds seized from defendant’s bank account.

With regard to forfeiture, Federal Rule of Criminal Procedure 32.2 provides, in relevant part, that:

As soon as practical after...a plea of guilty...is accepted, on any count in an indictment or information regarding which criminal forfeiture is sought, the court must determine what property is subject to forfeiture under the applicable statute...

Rule 32.2(b)(1)(A). Federal Rules of Criminal Procedure 32.2(b)(1)(B) further provides that “[t]he court’s determination may be based on evidence already in the record, including any written plea agreement...”

Rule 32.2 also provides for entry of a preliminary order of forfeiture, stating that,

If the court finds that property is subject to forfeiture, it must promptly enter a preliminary order of forfeiture...directing the forfeiture of specific property. The court must enter the order without regard to any third party’s interest in the property. Determining whether a third party has such an interest must be deferred until any third party files a claim in an ancillary proceeding under Rule 32.2(c).

Fed. R. Crim. P. 32.2(b)(2)(A).

Rule 32.2 provides for the timing the preliminary order of forfeiture, as follows:

Unless doing so is impractical, the court must enter the preliminary order sufficiently in advance of sentencing to allow the parties to suggest revisions or modifications before the order becomes final as to the defendant...

Fed. R. Crim. P. 32.2(b)(2)(B).

Defendant's sentencing date is August 22, 2019, making it appropriate for the Court to enter a Preliminary Order of Forfeiture with regard to the Subject Property and forfeiture money judgment at this time. Any claims by third parties to the Subject Property shall be resolved under the procedures set forth in 21 U.S.C. § 853(n), as stated in the proposed Preliminary Order of Forfeiture submitted concurrently herewith. Fed. R. Crim. P. 32.2(b)(2)(A), (c).

Pursuant to Local Rule 7.1, the undersigned government attorney consulted with defendant's attorney, David S. Steingold, and provided a copy of this Application and the proposed Preliminary Order of Forfeiture via e-mail. Mr. Steingold advised government counsel that he has no objection to the Application and proposed preliminary order of forfeiture.

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Conclusion

Pursuant to Federal Criminal Procedure 32.2, and based upon defendant's guilty plea, the Indictment, the Forfeiture Bill of Particulars, and information contained in the record, the United States respectfully requests that the Court enter the Preliminary Order of Forfeiture, which will be submitted to the Court via ECF utilities.

Respectfully submitted,

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Dated: August 21, 2019

Certificate of Service

I hereby certify that on August 21, 2019, the foregoing was electronically filed using the ECF system which will send notification of such filing to all ECF participants.

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